

**C & K Market, Inc. d/b/a Ray's Sentry and United
Food & Commercial Workers Local 555, AFL-
CIO, CLC, Petitioner. Case 36-RC-5587**

November 22, 1995

DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS
BROWNING, COHEN, AND TRUESDALE

On July 6, 1994, the Regional Director for Region 36 of the National Labor Relations Board issued a Decision and Direction of Election in the above-captioned proceeding¹ in which he found that the Employer's bakery and delicatessen department employees including pizza employees (bakery/deli) working in the Employer's Central Point, Oregon, store constituted an appropriate unit.² The Regional Director, citing several cases in which the Board found separate units of meat department employees to be appropriate, found that the Employer's bakery/deli employees had a community of interest distinct from that of the Employer's other employees, warranting a separate appropriate unit. On July 20, 1994, the Employer filed a timely request for review, contending that the only appropriate unit is storewide (including grocery, meat, general merchandise, produce, video, and pharmacy employees).³ On July 29, 1994, the Petitioner filed a brief in response to the Employer's request for review. On August 8, 1994, the Board granted review. Thereafter, the Employer filed a brief on review. The election was conducted on August 5, 1994, as scheduled and the ballots were impounded.

We have carefully considered the record, including the briefs of the parties.⁴ We find that the bakery/deli employees do not constitute a separate appropriate unit. We therefore reverse the Regional Director and dismiss the petition.⁵

¹ On July 7, 1994, the Regional Director issued an erratum to reflect the correct date on which the election eligibility list must be received in the Regional Office and the correct date on which a request for review must be filed with the Board.

² The Petitioner did not seek the pizza employees. The Regional Director, however, included them in the unit because they are clearly within the bakery/deli department, and share common supervision and a community of interest with the bakery/deli employees. No party requested review of the Regional Director's finding in this respect.

³ The parties stipulated that office clerical employees should be excluded from any unit found appropriate.

⁴ On June 21, 1995, the Petitioner filed a motion to allow filing of supplemental statement of authorities. The Petitioner's motion is granted, and we have considered the cases cited therein.

⁵ The Petitioner has not indicated that it would be willing to proceed to an election in any unit broader than the bakery/deli department. We, therefore, have not sought to determine what would constitute an appropriate unit here.

I. FACTS

The Employer operates a number of grocery stores in Oregon and California, including one in Central Point, Oregon. The Central Point store is divided into several departments: grocery, meat, general merchandise, produce, video, and bakery/deli. There is a pharmacy located in the store. The store is under the overall direction of a store manager. The store manager, assistant store manager, bakery/deli manager, bakery/deli assistant manager, and meat manager are stipulated statutory supervisors. There are approximately 60-75 employees in the store.

Bakery/deli employees are directly supervised by the bakery/deli manager and assistant manager. There are 17 employees in the bakery/deli department, including the employees in the pizza kiosk. The bakery/deli employees wait on customers from behind a counter. They sell breads, rolls, cakes, pies, donuts, corn dogs, cooked chicken, hot potatoes, cold meat, cheeses, salads, ready-to-bake pizzas, ice cream, sodas, and popcorn. Breads, deli items, and cheeses are also sold from open display shelves located elsewhere in the store.

Bakery/deli employees include cake decorators, clerks, and fryer/bakers. Cake decorators mix ingredients for cakes and bake cakes, mix frosting, frost and decorate cakes, and assist with customer service as needed. The clerks select and wrap items at the request of customers and operate the cash register. They fry chicken, potatoes, and burritos, bake chicken in an oven on a rotisserie, make sandwiches, salads, and popcorn, slice meats and cheese, slice bread and wrap bakery products. Fryer/bakers prepare mixes for cakes and donuts, make donuts, including icing, glazing, or decorating them, bake cakes, cookies, puff pastries, sweet dough, and Danish pastries, and cut and bag those products. The employees do not bake from scratch. They work from bake-off (frozen materials) and dry mixes. The only specific training received by the bakery/deli employees was a period of 4 days in 1991 when the deli section was added to the remodeled bakery.

The store has a kiosk located near the video department, from which employees prepare and sell hot pizza slices. A pizza franchiser provides training and pizza ingredients to the Employer's pizza employees. Pizza employees perform most of their work in the kiosk, but occasionally enter the bakery/deli area to obtain price labels, sort out cheeses, and use the sinks or the convection oven. Pizza employees wait on customers at the kiosk but do not handle money. Customers who purchase pizza may pay for it at the bakery/deli register. Pizza employees also prepare the ready-to-bake pizzas sold in the bakery/deli.

The Employer's grocery department employs checkers, bottle clerks, dairy/frozen food clerks, general

clerks, file clerks, and courtesy clerks. Checkers ring up customers' groceries. Bottle clerks count returned bottles and cans and sort them, as well as sort and stack cases of products. Dairy/frozen food clerks order and fill the dairy case. They occasionally check groceries and may assist customers to vehicles. General clerks "face" shelves, receive freight, unload boxes, stock shelves, clean, occasionally check groceries and assist customers. Courtesy clerks bag groceries, assist customers, stock, face shelves, and clean. The grocery department is under the immediate supervision of the store manager.

Produce clerks work under the produce manager. They unload produce, and clean and stock cases. The meat department employees are supervised by the meat department manager. The meatcutters cut and trim meat, poultry, and fish, using handtools and power equipment. The meat wrappers and counter/cleanup employees wrap and weigh meat, poultry, and seafood products, and operate the meat slicer and cubing machine. The one general merchandise employee works directly under the store manager and takes care of inventory and nonfood display items. The video customer service clerks work in the video department under the direct supervision of the store manager. They issue videotapes to customers, accept payment, make change, and stock the video shelves.

Although the bakery/deli, produce, and meat departments have their own supervisors, the store manager is responsible for the day-to-day operations of the entire store. The bakery/deli manager interviews and recommends the hire of department employees, but the final approval for this hiring rests with the store manager. The bakery/deli manager may issue verbal and written warnings, with the store manager reviewing the written reprimand. Only the store manager can terminate an employee, but there is no evidence that any bakery/deli employee (apart from a supervisor) has been terminated. The bakery/deli manager assigns and evaluates the department's employees. She sets work schedules for the department, except for the pizza employees whose schedules are drawn up by the pizza manager. The bakery/deli manager trains the bakery/deli employees; the store manager handles employee orientation.

All employees receive the same health and pension benefits. Wages paid to the bakery/deli employees fall within the lower range of the Employer's wage scales and are comparable to those of the counter employees. The vast majority of employees storewide are part-time. There are few instances of employee interchange or transfer. The store is open 24 hours a day. The bakery/deli department is staffed from 4 a.m. to 8 p.m. The pizza kiosk is open until 9 p.m. Other departments have varying hours. The produce department is staffed from 3 a.m. until 7 p.m., although the hours are ad-

justed seasonally. After the bakery/deli department closes for the day, a grocery clerk may go behind the counter to obtain a bakery item or cold food for a customer.

II. ANALYSIS

Unlike cases involving skilled meat department employees,⁶ the Board does not apply a presumption that a separate unit is appropriate for bakery or delicatessen employees even when they exercise a full range of traditional craft skills. In determining whether a unit of bakery/deli employees is appropriate, the Board uses a traditional community-of-interest test. The Board generally places bakery/deli employees in storewide units with grocery employees. *Ideal Super Markets*, 171 NLRB 1 (1968) (separate deli unit was inappropriate where employees exercised similar skills as other employees, possessed no special qualifications, required little training, worked similar hours, received the same benefits, and worked under the same overall supervision of the store manager); *Payless*, 157 NLRB 1143 (1966) (grocery store unit, excluding meat department employees, found appropriate, and separate unit of deli employees found inappropriate where the deli employees performed similar work under similar working conditions as the grocery employees, were commonly supervised, and were functionally integrated with the grocery department); *Valu King*, 206 NLRB 1 (1973) (deli/bakery employees included in a unit with grocery employees based on their duties, functions, and interests; the bakery/deli employees' jobs consisted of cooking, baking, pricing, stocking, and waiting on customers; bakery/deli and grocery employees had common supervision); *Overton Markets*, 142 NLRB 615 (1963) (bakery employees included in grocery unit).

Only rarely has the Board excluded bakery/deli employees from overall grocery units. In those instances, the employees were skilled, required substantial training, and/or shared other interests apart from those of the grocery employees. For example, in *Weber's I.G.A.*, 244 NLRB 594 (1979), the Board found, based on higher level skills, substantial training, common supervision, and considerable interchange, that the employer's bakery/deli employees were more closely identified with the employer's meat department employees than with its grocery employees, and therefore extended the traditional meat department exclusion from the grocery unit to the bakery and deli employees. In *Safeway Stores*, 178 NLRB 412 (1969), the Board similarly permitted a craft severance election for bakers from a grocery unit (the meat department was separately represented) where the bakers baked from primary ingredients and sometimes created their own

⁶See *Scolari's Warehouse Markets*, 319 NLRB 153 (1995), for discussion of the Board's treatment of meat department employees in determining appropriateness of separate units.

recipes, were experienced bakers with journeyman status or participants in the employer's 2-year apprenticeship program, were separately supervised, and had only rare contact with customers. Bakery clerks, who performed sales functions, remained in the grocery unit. The Board in that case distinguished the craftsmen bakers from the employer's previous bakers who had worked from frozen products, regularly performed sales functions, and were supervised by the store manager.

Here, there is no indication that the bakery/deli employees require specialized skills or extensive training to perform their work. The Employer's bakery/deli employees, in preparing bakery products from frozen dough and mixes, and in preparing and serving hot and cold foods, exercise skills and perform duties similar to those of bakery and deli employees the Board previously has included in grocery units. Indeed, the lower wages of the Employer's bakery/deli employees, when compared to those of all but the counter employees, supports a finding that the Employer does not view the bakery/deli employees as being specially skilled. Although there is little interchange between the bakery/deli employees and other store employees, grocery clerks will go behind the bakery/deli counter to retrieve bakery or deli products for customers after the bakery/deli closes for the day. All store employees have similar benefits and most work part time.

Although the bakery/deli has its own supervisors, there are, as described above, some overlapping elements of supervision by the store manager, who directly supervises the grocery and video departments. The bakery/deli employees have different hours from those of other departments, but various other departments also have different hours; in fact, the hours of staffing in produce are similar to those in bakery/deli. Considering all of these circumstances, we find that the supervision, to the extent it is separate from other departments, and the limited interchange and transfer do not render the bakery/deli department sufficiently distinct to warrant a separate unit.⁷

With regard to the Regional Director's reliance on cases involving separate meat department units to support his finding of a separate bakery/deli unit, we note first, as set forth above, that, unlike the meat department cases, the Board has not applied a presumption that bakery/deli departments constitute a separate ap-

propriate unit even when these employees are skilled craftspeople.⁸ Second, the Board's recently issued decision in *Scolari's Warehouse Markets*, supra, is distinguishable. Although the Board did not apply the presumption in that case, the meat department employees had a sufficiently distinct community of interest from other employees at the supermarkets involved that a separate meat department unit was warranted. However, there, in addition to other factors demonstrating their distinct community of interest, the meatcutters in *Scolari's* continued to exercise many of the traditional craft skills and had extensive meatcutter training or were apprentice meatcutters. As indicated above, it has not been demonstrated that the bakery/deli employees here possess or exercise such skills or require such training.

Accordingly, we find that the bakery/deli unit is inappropriate.

ORDER

The Regional Director's Decision and Direction of Election is reversed and the petition is dismissed.

MEMBER BROWNING, dissenting.

Contrary to the majority, I would affirm the Regional Director's decision that the petitioned-for unit of bakery and deli employees, with the addition of the pizza employees,¹ constitutes a separate appropriate unit. None of the employees in the store are organized, there is no history of bargaining in a broader unit, and no labor organization seeks to represent the bakery, deli, and pizza employees on a broader basis. Although the bakery and deli employees do not exercise a high level of skills,² they do perform tasks requiring skills distinct from those done by other store employees. Bakery and deli employees mix, bake, and ice cakes, fry and glaze donuts, and prepare other baked products. These employees also fry chicken, potatoes, and burritos, bake rotisserie chicken, make sandwiches, salads, and popcorn, and slice meats, cheeses, and bread.

The bakery and deli employees work in a separate triangular area at the front of the store and wait on

⁷ Contrary to our dissenting colleague, the fact that the bakery/deli employees perform distinct job functions does not support a separate unit. These job functions do not, as our colleague concedes, require a high level of skill. Nor, as the facts here indicate, do the bakery/deli employees require any extensive training to perform their work. Lacking specialized skills and significant training, the bakery/deli employees are not sufficiently distinct from the other grocery employees who, like the bakery/deli employees, may perform a variety of distinct functions but who also lack special skills and training.

⁸ Although the meat department cases cited by the Regional Director (*Mock Road Super Duper, Inc.*, 156 NLRB 983 (1966); *Stevens Produce Co.*, 214 NLRB 131, 139 (1974); *Owego Street Supermarkets*, NLRB 159 1735, 1741 (1966)), use community-of-interest standard language, these cases were decided early in the development of meat department unit case law. Because the Board in those cases acknowledged the general differences in skills, functions, and duties of meat department employees from other retail store employees and the Board's traditional separation of meat department employees, we view these cases as implicitly incorporating a presumption standard. See *R-N Market*, 190 NLRB 292 (1971).

¹ No request for review was filed with respect to the Regional Director's finding that the pizza employees should be included in the unit.

² The bakery employees work with frozen materials and dry mixes and do not prepare the baked goods from scratch.

customers from behind a counter. They are hired separately, provided with different training, and separately supervised by their own manager and assistant manager who recommend hiring and disciplinary measures. They do not regularly interchange with other employees and other employees do not regularly work within the bakery and deli area. Although all employees at the store share common benefits, bakery and deli employees have separate wage scales and work different hours

from other employees. Bakery and deli employees are readily identifiable as a distinct group or department within the store.

In my view, the foregoing factors compel the conclusion that the bakery and deli employees, together with the pizza employees, share a sufficiently distinct community of interest from other employees to warrant finding that they constitute a separate appropriate departmental unit.